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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 2740 OF 2006

Prakash Mathuradas Jaisingh ... Petitioner

V/s

The State of Maharashtra & anr. ... Respondents

ALONGWITH
WRIT PETITION NO. 2741 OF 2006

Ashok Ghanshyamdas Rajani ... Petitioner

V/s

The State of Maharashtra & anr. ... Respondents

Mr. H.V. Nimbalkar with S.R. Ganbavale for the petitioner in both petitions.

Mr. P.S. Hingorani, A.P.P. for the respondents in both petitions.

CORAM: V.G. PALSHIKAR &
SMT. NISHITA MHATRE, JJ.

DATED: 20TH DECEMBER, 2006.

P.C.:

1. These petitions seek quashing of the F.I.R. lodged by the Sale Tax Department and the State of Maharashtra. The submission is that the Bombay Sales Tax Act is a Code by itself and it provides for all eventualities and provides for all procedures against evasion of duty or

unlawful assessment and for any action under the Sales Tax Act and, therefore, these prosecutions cannot survive.

2. Reliance was placed on the provisions of Section 63 clause (14) and Section 36 clause (5), and it was contended that no prosecution for an offence under the Bombay Sales Tax Act is permissible if penalty has been imposed under the Act. Similar is the provision of Section 63 clause (14) where no prosecution for an offence against this Act shall be instituted on imposition of penalty. The contention is that the phraseology of both clauses is different and Section 63 clause (14) grants protection against the prosecution under any other Act for any other offence.

3. We are unable to accept this submission. To illustrate, if an assessee, under the Sales Tax Act prevents the Sales Tax Officer from carrying on his duties by putting deliberate hindrance in his duties, his liability for prosecution under Section 353 of the Indian Penal Code cannot be stopped or prevented by recourse to Section 63 clause (14). Offences under the Indian Penal Code are independent in nature and they cannot be prevented by recourse to this provision which is obviously the provision for anything done under the

Sales Tax Act.

4. Apart from that, presently only a first information report is lodged. Petitioners will have adequate opportunity to explain to the authorities that no offence as alleged in the F.I.R. is committed, in which case the police may not put up the chargesheet. Even if the chargesheet is filed, liberty to seek discharge from the competent Court under the criminal jurisdiction is available. In the event of that also been rejected, revision under Section 397 of the Criminal Procedure Code is yet another remedy available. When three effective remedies are available and the view taken by the Supreme Court of India is consistent that F.I.R. should be quashed only in rarest of rare cases, we see no reason to interfere with the F.I.R. at this juncture. Keeping all the contentions open for the petitioner at appropriate stages, the petitions are rejected.

5. It has been further stated on behalf of the department that they will give a notice of 72 hours to the assessee petitioners in the event of their wanting to arrest any of them. In view of this factual position, even if arrest proposal is made, 72 hours are available to seek appropriate orders in relation to the

bail. Therefore, the petitions are rejected.

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